

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 17, 2017

v

JENNIFER MARIE HAMMERLUND,

Defendant-Appellant.

No. 333827
Kent Circuit Court
LC No. 15-009717-FH

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Defendant was convicted by a jury of operating under the influence of intoxicants (third offense) (OUI), MCL 257.625, and failure to report an accident to fixtures, MCL 257.621. She was sentenced to five years' probation, with four months' imprisonment for the felony OUI conviction. On appeal by right, defendant argues that the trial court erred by denying her motion to suppress evidence because her state and federal constitutional rights against unreasonable search and seizures were violated when she was arrested in her home without a warrant. For the reasons that follow, we reject defendant's arguments and, therefore, affirm her convictions and sentences.

I. MATERIAL FACTS AND PROCEEDINGS

On September 30, 2016, defendant crashed her car into a guardrail on an off-ramp from US 131 to 54th Street in Wyoming, Michigan, while driving home from work as a server at approximately 2:20 a.m. Sustaining only a minor injury, she abandoned her car and called for a ride home. She did not report the accident to police.

At approximately 3:30 a.m., Officer Erich Staman of the Wyoming Police Department was dispatched to the area to investigate the reported crash where he observed an unoccupied vehicle facing the wrong direction on the off-ramp. His investigation revealed that the vehicle belonged to defendant, a Kentwood resident. On request, Kentwood Police Department officers made contact with defendant at her home to check on her welfare.

When he arrived at defendant's address, Officer Staman approached the home and initiated a conversation through the open front door with defendant standing approximately 15 to 20 feet inside. He remained on the porch while they talked. Defendant would not provide her identification directly to Officer Staman and, instead, gave her driver's license to a third party

who walked to the door and handed it over on her behalf. In a five- or six-minute conversation, defendant told Officer Staman that she was the owner of the crashed car and that she had been driving. Other than a bloody nose, she said she was uninjured in the crash. She confirmed that she did not report the accident. Officer Staman testified that he believed defendant was intoxicated because her speech was slightly slurred and she was using the wall for balance.

Officer Staman collected the information he needed from defendant's driver's license and held it out for only her to retrieve. When defendant came to the doorway and reached out of the home to take back her ID, Officer Staman grabbed her wrist to take her into custody for the "hit and run charge." He then testified:

I stood on the outside of the porch when I initially grabbed [her arm], and she had pulled away, which caused me to have to grab it again, and the momentum took us inside, maybe two or three steps inside the doorway.

Defendant was handcuffed inside the home and placed in a police car where she was recited her *Miranda*¹ warnings. She waived her rights and agreed to talk further with Officer Staman. A stipulated portion of an in-car audio/video recording was played for the jury. Defendant said the crash occurred when an erratic driver whom she had encountered earlier on the highway cut her off as she exited. She admitted that she had two beers and a shot within several hours of driving, but she did not think alcohol was a factor in the accident. Defendant told Officer Staman unequivocally that she did not have anything to drink after the accident. Defendant was placed under arrest for the property damage accident and driving under the influence. At the Kent County jail, she submitted to two breath alcohol tests shortly after 5:00 a.m. reflecting a blood alcohol content of .22 and .21, respectively.

In her pre-trial motion to suppress and dismiss, defendant alleged that Officer Staman violated her Fourth Amendment rights when he unlawfully entered her home to arrest her, and therefore evidence obtained after the arrest should be excluded. The trial court issued a written opinion denying defendant's motion, ruling that "there was a constitutionally valid arrest and defendant's attempt to flee from that arrest did not render [the arrest] unconstitutional." As a result, evidence of defendant's in-car statements and Breathalyzer tests were admitted at trial. As previously noted, a jury found defendant guilty on both charges, and defendant was sentenced to five-years' probation and four months in jail.

II. DISCUSSION

"To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal." *People v Aldrich*, 246 Mich App 101, 116; 631 NW2d 67 (2001). Defendant's pre-trial motion to suppress evidence raised the argument that there had been an unlawful entry into her home by Officer Staman in violation of the Fourth Amendment. Therefore, defendant preserved this issue for review.

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

This Court reviews for clear error a trial court's findings of fact in a suppression hearing and reviews de novo the ultimate decision on a motion to suppress. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). In addition, "whether there has been a violation of the Fourth Amendment and application of the exclusionary rule resulting from a constitutional violation are matters of law that [this Court] review[s] de novo." *People v Fletcher*, 260 Mich App 531, 546; 679 NW2d 127 (2004).

A. LAWFULNESS OF ARREST

We first turn to the issue whether the trial court erred in denying application of the exclusionary rule when the trial court assumed the arrest to be in violation of Michigan law. "[T]he drastic remedy of exclusion of evidence does not necessarily apply to a *statutory* violation." *People v Hawkins*, 468 Mich 488, 500; 668 NW2d 602 (2003). "Whether the exclusionary rule should be applied to evidence seized in violation of a statute is purely a matter of legislative intent." *Hawkins*, 468 Mich at 500.

The relevant statute provides that a peace officer may make a warrantless arrest if "[t]he peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days . . . has been committed and reasonable cause to believe the person committed it." MCL 764.15(1)(d). Officer Staman did not have a warrant to arrest defendant, nor did the misdemeanor crime he was investigating meet the sentencing threshold for a warrantless arrest.² But even though Officer Staman was under the misimpression that the crime of failure to report damages to fixtures was a 93-day misdemeanor, as the trial court ruled, "the plain language of MCL 764.15 does not create a remedy of exclusion." As this plain reading of the statute is consistent with our previous case law, the court did not err in denying application of the exclusionary rule based solely on violation of the statute.

We next determine whether Officer Staman's warrantless arrest of defendant was an error of "constitutional dimensions" to implicate the exclusionary rule. See *People v Vasquez (After Remand)*, 461 Mich 235, 241; 602 NW2d 376 (1999). A warrantless arrest does not offend the constitution when "probable cause to arrest existed at the moment the arrest was made by the officer." *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998); see also *People v Johnson*, 431 Mich 683, 691; 431 NW2d 825 (1988). In this case, defendant does not dispute there was probable cause for the arrest.³ Thus, the trial court did not err in ruling that the arrest in and of itself was supported by probable cause and, therefore, constitutionally valid.

² Failure to report an accident with damage to fixtures is a misdemeanor punishable by "imprisonment for not more than 90 days[.]" MCL 257.621(a); MCL 257.901(2).

³ While not in dispute, there was sufficient evidence in the record to demonstrate probable cause for an arrest. Officer Staman discovered an abandoned car registered to defendant that showed signs it had been the cause of damage to public road fixtures. Subsequently, defendant made pre-arrest statements that she was driving and that she had left the scene of the accident without reporting the damage.

Having established probable cause supported the arrest, and thus did not violate defendant's constitutional rights, defendant argues that Officer Staman violated her Fourth Amendment rights⁴ by unlawfully entering her home to arrest her when (1) the arrest did not occur in a public place and (2) the hot-pursuit exception to justify a warrantless entry does not apply.

B. LOCATION OF ARREST

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"[T]he Fourth Amendment has drawn a firm line at the entrance to the house." *Payton v New York*, 445 US 573, 590; 100 S Ct 1371; 63 L Ed 2d 639 (1980). In *People v Williams*, 472 Mich 308, 314; 696 NW2d 636 (2005), the Michigan Supreme Court recognized that "the touchstone of the Fourth Amendment is reasonableness." (citations omitted). "Reasonableness is measured by examining the totality of the circumstances." *Id.*

In *United States v Santana*, 427 US 38, 42; 96 S Ct 2406; 49 L Ed 2d 300 (1976), the Court held that "the warrantless arrest of an individual in a public place upon probable cause [does] not violate the Fourth Amendment." See also *People v Collier*, 183 Mich App 473, 475; 455 NW2d 313 (1989). In *Santana*, police were investigating the defendant for a suspected illegal drug transaction when they recognized her standing in her doorway. When the defendant retreated into her home, police officers pursued her inside and arrested her without a warrant. The Court reasoned that standing in the doorway of a home was "not in an area where [the defendant] had any expectation of privacy." *Santana*, 427 US at 42. See also *People v Beachman*, 98 Mich App 544, 552; 296 NW2d 305 (1980). Further, the Court reasoned that the defendant "was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." *Santana*, 427 US at 42.

Defendant attempts to distinguish her case from the holding in *Santana*, by pointing out that she was in her bedroom when police arrived rather than standing in the doorway like the defendant in *Santana*. Defendant's argument would have had merit had she remained in her bedroom or standing "15-20 feet" inside the home with an open door. The argument fails under the facts, however, as *Santana* does not define a doorway as a public place only when a

⁴ The state constitutional right against unreasonable search and seizure is contained within Const 1963, art 1, § 11, and is construed to provide the same protections as the Fourth Amendment to the United States Constitution. *People v Antwine*, 293 Mich App 192, 194-195; 809 NW2d 439 (2011).

defendant is observed there first. Rather, the Court emphasized the defendant's expectation of privacy. By voluntarily moving into the doorway, defendant exposed herself to a fundamentally unique characteristic of a public place that she had not up to that point – touch. By extending her arm beyond the threshold, she went further than the defendant in *Santana*, who was standing “directly in the doorway,” where one step backward or forward would have left that defendant either inside or outside. *Santana*, 427 US at 40 n 1. Therefore, defendant's act of reaching out to grab her identification from Officer Staman caused her to cross *Payton*'s “firm line” of the entrance to her house, thereby exposing herself to a public arrest based on probable cause. 445 US at 590.

Finally, defendant seeks support from two cases where courts held that doorway arrests were unconstitutional and not in line with *Santana*. Both are readily distinguishable from the current case in that the defendants did not cross the threshold of their respective doorways prior to arrest by the officers.

First, in *Cummings v City of Akron*, 418 F3d 676, 687-688 (CA 6, 2005), the Sixth Circuit held that police investigating a domestic disturbance call unlawfully entered the defendant's home without a warrant to arrest him after an encounter in the doorway. When the defendant attempted to close the door and end the encounter, one of the arresting officers prevented him from doing so by placing his foot inside the door. *Id.* at 679. The court distinguished *Santana* in that the defendant “never fully exposed himself to the public view.” *Id.* at 686. The court reasoned that the defendant had “manifested his intent to keep the inside of his home private, first by attempting to talk to the officers through the window and later by only partially opening the front door” *Id.* at 685.

In this case, the door was at least more than partially open, as Officer Staman testified that he could see defendant 15-20 feet inside her home without any difficulty. There is no evidence in the record that Officer Staman prevented defendant from closing the door or ending her encounter with him. Holding out defendant's identification for only her to retrieve was not an obstacle on par with placing a foot in the door. Defendant was free to refuse to move to the door and retrieve her identification, thereby avoiding exposing herself to arrest, as she understood when she refused to hand it over directly in the first place.

In *Flores v Lackage*, 938 F Supp 2d 759, 770-771 (ND Ill, 2013), the court held that a warrantless arrest was unconstitutional when police arrested the plaintiff following a doorway encounter resulting in pursuit and arrest inside his home. The court reasoned that “[the plaintiff] (who at no point left the confines of his home) did not relinquish his reasonable expectation of privacy simply by answering a knock at his door.” *Id.* In this case, Officer Staman grabbed defendant's wrist when she reached out to retrieve her identification. Unlike the plaintiff in *Flores*, the record reflects that pursuit of defendant by Officer Staman “maybe two to three steps” inside the house occurred after defendant left the confines of her home when she reached out to retrieve her identification.

Therefore, the ruling by the trial court that defendant was in a public place was not in error.⁵

C. “HOT-PURSUIT” EXCEPTION

Defendant next argues that the trial erred in ruling that Officer Staman’s warrantless entry into defendant’s home was justified because he was “clearly” in pursuit of the arrest. Defendant contends that the hot-pursuit exception to a warrantless arrest is not applicable because defendant was inside when police arrived and she never left her home.

“Generally, a search conducted without a warrant is unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement.” *People v Snider*, 239 Mich App 393, 407; 608 NW2d 502 (2000) (citation and quotation marks omitted). “[P]olice bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests.” *Welsh v Wisconsin*, 466 US 740, 749-750; 104 S Ct 2091; 80 L Ed 2d 732 (1984). However, a defendant “may not defeat an arrest which has been set in motion in a public place . . . by the expedient of escaping to a private place.” *Santana*, 427 US at 43.

In her argument that the hot-pursuit doctrine did not justify a warrantless entry into her home by police, defendant cites the *Welsh* Court’s refusal to apply the doctrine to a warrantless entry and arrest by police into a private home. The holding in *Welsh* does not compel us to reach the same result here. In that case, a similar type of abandoned vehicle investigation led police to proceed directly into the defendant’s house without a warrant where he was found in bed and arrested for a non-criminal traffic offense. *Welsh*, 466 US at 740. Here, and consistent with *Santana*, Officer Staman did not proceed directly from the accident scene into defendant’s home and arrest her in her bedroom or even while in the confines of her home. Instead, as the trial court determined, Officer Staman grabbed defendant’s arm when it was extended outside of her home and only entered when defendant “pulled away,” drawing him inside where he completed the arrest.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Jane E. Markey

⁵ Defendant does not challenge the trial court ruling that Officer Staman was “legitimately in the area” while standing on her porch at approximately 3:45 a.m. Therefore, this Court does not have occasion to address whether that finding is consistent with the recent Michigan Supreme Court ruling on warrantless “knock and talk” visits by police to a home during unusual hours. *People v Frederick*, 500 Mich 228; 895 NW2d 541 (2017) (Docket Nos. 153115; 153117).